

Office Communication

In the PTO Office Communication mailed 2/08/2007 (hereinafter Office Communication) the Examiner states:

The Reply Brief filed on 1/3/06 fails to comply with 37 CFR 41.41 which requires that the Reply Brief must be filed within two months from the date of the Examiner's answer. In this case the Examiner's answer was mailed on 11/1/06. Accordingly, the Reply Brief will be made of record but will not be considered.

However, Applicants submit the Reply Brief was timely filed on January 3, 2007. As stated by the Examiner, under 37 CFR 41.41 a Reply Brief must be filed within two months from the date of the Examiner's answer. Furthermore, as noted by the Examiner, Applicants filed the Reply Brief on January 3, 2007. Although January 1, 2007 would normally be considered the two month date for response to an Examiner's Answer mailed on November 1, 2006, January 1, 2007 (New Year's Day) was a federal holiday. (See MPEP 710.05). Furthermore, according to MPEP 710.05:

"[a] When the day, or the last day, for taking any action or paying any fee in the United States Patent and Trademark Office falls on Saturday, Sunday, or a Federal holiday within the District of Columbia the action may be taken, or the fee paid, on the next succeeding secular or business day." (Emphasis added).

The next succeeding business day after January 1, 2007 was January 3, 2007, since the USPTO was closed on January 2, 2007 in observance of a National Day of Mourning (as evidenced by the attached web page from the official USPTO website). Thus, the Reply Brief filed on January 3, 2007 was a timely response to an Examiner's Answer mailed on November 1, 2006 and should be considered.

If the Examiner still believes the Reply Brief to be untimely, the Examiner is strongly encouraged to contact Gero McClellan, attorney of record, at (336) 643-3065, for further explanation.

Respectfully submitted, and
S-signed pursuant to 37 CFR 1.4,

/Gero G. McClellan, Reg. No. 44,227/

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